IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.41 OF 2004

The State of Maharashtra. .. **Appellant.**

v/s.

Dada Nana Mane. .. **Respondent.**

Shri A.M.Shringarpure, APP for the state.

None for respondent.

CORAM: V.M.KANADE, J.

DATE : 25TH NOVEMBER, 2004,

P.C. :-

. Heard the learned APP for the State. The State is challenging the Judgment and order passed by the Judicial Magistrate First Class, Mhaswad, Dist.Satara in Regular Criminal Case No. 28/2003. By the said Judgment and order, the learned Judicial Magistrate First Class acquitted the accused of the offence with which he was charged under section 304(a) of the Indian Penal Code.

2. The prosecution case is that the deceased was removing the electric motor from the well and P.W.2 and

3 were inside the well assisting the deceased. Prosecution case is that the accused started the electric motor and as a result the deceased received electric shock and he died on the spot.

3. The learned APP has taken me through the notes of evidence and also other documentary evidence produced by the prosecution. From the spot panchanama, it can be seen that the width of the well is 55 ft. and the water level was at around 28 ft. from the top surface. The deceased was trying to remove the electric motor from the well when the incident in question took place. After perusing spot panchanama and evidence of P.W.2 and 3 who were examined as eye-witnesses, it is difficult to arrive at a conclusion that P.W.2 and 3 would have seen the person who had started electric motor as admittedly they were inside the well. Further the starting button was at a distance of 25 ft. from the well and the box was locked. Thus it is difficult to accept the evidence of P.W.2 and 3 that they had seen the accused starting the button.

4. Apart from that, there are other infirmities in the prosecution case. The prosecution has not examined the investigating officer. Similarly the original First Information Report is also not brought on record.

Name of the accused is not mentioned in the F.I.R. There is also gross delay in filing the report in the police station. Thus in my view, there is no reason to interfere with the findings recorded by the Trial Court. Leave is refused. Appeal is dismissed.

sd/-